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PROBATION SERVICES STUDY COMMITTEE

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MEETING MINUTES

Meeting Date: September 23, 1998
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Rep. Dale Sturtz, Chair; Sen. Patricia Miller, Vice-Chair; Mary Beth Bonaventura; Jim Brewer; Robert Chamness; Sharon Duke; Craig Hanks; Joe Hooker; Iris Kiesling; David Matsey; Dave Powell; Madonna Roach; Thomas Ryan.

Members Absent: Sen. Anita Bowser; Rep. Ralph Foley; John von Arx; Glenn Boyster; Chris Cunningham; Lance Hamner.

Rep. Dale Sturtz began the meeting at 1:25 p.m. The Committee approved minutes from the August 27 and September 9 meetings. Rep. Sturtz opened the meeting to testimony.

Indiana Association of Counties (IAC)

Matt Brooks, IAC described how counties must heavily fund probation services (about \$30 million annually for all counties), but lack any control of how courts use the funding. He requested that the Committee research probation practices in other states before making any decisions. He added that Nicolas Pasyanos, IAC, wished to describe county probation funding issues in more detail at the next Committee meeting. He then introduced Steve Wills, a former Marion County probation officer, to testify on the IAC's behalf.

Steve Wills described his background as former Probation Officers Professional Association of Indiana (POPAI) president and his extensive travel around the country speaking on probation services. He mentioned that, based on materials distributed at the September 9 meeting, Indiana not only ranked in the top ten states in rate of probation supervision (2,294 per 100,000 persons), but it also had the 13th largest probation population (95,267 persons). He distributed a handout¹ and read through its definitions regarding probation and parole. He stressed that the distinct missions of probation and parole are confused by split sentences when part of a prison sentence is suspended and served under probation.

¹Copies of documents are on file with the Legislative Information Center, in Room 230 of the State House. Contact Legislative Information by phone at (317) 232-9856 or by mail at 200 W. Washington St., Rm 230, Indianapolis, IN 46204-2789.

Mr. Wills described other states' probation services, including the following: (1) administration of probation and parole; (2) county and state controls of probation services; (3) probation and parole budgets (He noted that Indiana's probation budget is about \$31 million.); and (4) the various probation and parole agencies. Mr. Wills described Arizona and Illinois probation services as comparable to Indiana's in their judiciary control of services. He described Arizona state/local probation funding, programs, probation officer salaries, and caseloads. He added that Arizona is currently debating whether probation should remain under judicial control.

Mr. Wills read through Illinois' probation elements, including methods whereby counties receive state funding: (1) 100% grant-in-aid salary reimbursements for counties participating in prison diversion programs; (2) a longstanding \$1,000 per month state officer subsidy; as well as (3) a state/local funding partnership wherein each pays half the salary. He also explained the number of probation officer positions in Illinois has remained relatively stable over the years.

Mr. Wills concluded by saying that probation should rightly be considered a state concern due to research showing that interstate highways and correctional facilities have attracted gangs and additional probation needs to communities. Mr. Brooks said that the state benefits when offenders are placed on probation instead of being sent to DOC. Judge Ryan suggested that there be some balance sought between probation administration and budgeting control. Mr. Brooks concurred. Mr. Wills mentioned that several states have used similar, intuitive approaches in mixing funding options.

David Matsey questioned state comparisons regarding probation due to the differing percentages of offenders in different systems. Thomas Ryan asked if IAC had a recommendation regarding probation funding. Mr. Brooks suggested that funding be balanced among counties, courts and the Department of Correction (DOC). Rep. Sturtz asked if Indiana probation officer salaries were higher than Illinois. Mr. Brooks responded that they were, and counties have for the most part lost control of probation officer salaries, although IAC still seeks to work with judges and the state to administer them. Judge Matsey responded that the Indiana Judicial Conference (IJC) has determined minimal salary levels, and judges can set them above that. Judge Ryan added that home rule should be included in any salary discussions.

Robert Chamness asked if Arizona and Illinois systems require minimum probation service and educational standards. Mr. Wills replied that Illinois has service standards, but was unsure on educational standards. Mr. Chamness asked if Illinois counties ignore minimum salary standards and how user fees were used. Mr. Wills replied that counties set entry-level salaries higher than established standards, but he did not know how user fees were used. Joe Hooker asked if the maximum Arizona probation caseloads for interstate compact probationers (60 probationers per officer) applied to all probation programs. Mr. Wills replied that only interstate compact caseloads are held to that level. Judge Ryan asked if IAC had a position on judicial involvement in probation operations and funding. Judges have the authority to incarcerate offenders or provide for their supervision. However, Judge Ryan speculated whether courts need to be directly involved in the funding issues of how incarceration or supervision is carried out. Mr. Brooks agreed that this funding control is the main issue for counties.

Indiana Judges Association

Judge Bruce Embrey, Miami County Circuit Court, described his 22 years of judicial experience in Miami County. He said that when he began, probation officers resigned before two years of service. Through salary increases and education requirements, he has decreased turnover, and his department has expanded from two probation officers to five, and a drug and alcohol counselor. These supervise 900 offenders. He acknowledged county councils' criticisms of probation officer salaries, who though paid less than school teachers, are sometimes paid more than county office holders. He expressed hope that funding issues may be addressed without altering the quality of probation services. Judge Embrey cautioned making changes on the use of probation user fees: more than one-third of his user fee revenue is used for probation officer salaries. Also, county general fund expenditures are often reimbursed by user fees.

Judge Embrey stated that felonies and juvenile crimes have more than doubled during his tenure. Also, the county jail is constantly over capacity, and either an alternative correctional system is needed or a

new jail. He mentioned county discussion that a new jail could be built and partially paid for with subsidies received from housing DOC prisoners. He stated his preference for greater use of community corrections programming to cut down on the number of jail inmates.

Judge Embrey said that his probation service works for most probationers. He agreed with the community corrections view that simply locking offenders up denies them the exercise of self responsibility. He emphasized the successes of Miami probation department: (1) its community service project; (2) funding provided for an alternative school; and (3) the benefit to families when breadwinners remained employed during probation instead of serving time in prison. He mentioned that with DOC help, electronic processing of probationer data will soon be available to study issues such as technical and criminal violations. He cautioned against mandating probation standards which do not take into account each jurisdiction's unique needs. Also, he warned against any actions which might interfere with the intimate involvement between probation and the court, e.g. his court's interviewing and hiring of probation officers.

Rep. Sturtz asked for a description of Miami County's probation fees. Judge Embrey replied that there is a \$50 initial fee and \$10 per month fee for felonies. (The maximum fee set in statute is \$15.) About \$80,000 is collected annually, with \$50,000 dedicated to probation officer salaries and the remainder currently dedicated to computerization. He added that probationers are allowed to "buy back" their fees through community service. David Powell asked the following: (1) If the state began funding probation services, should some user fees be redistributed to the state? (2) Should community corrections be combined with probation services? (3) Should probation officers carry weapons and have arrest powers. Judge Embrey replied to these questions. (1) Returning some user fees to the state would seem like a logical part of a state funding system. (2) Combining community corrections and probation might require courts to take over community corrections funding control. (3) His officers do not carry weapons, and probation officers in general should probably not have arrest powers.

Judge Matsey stressed that a substantial portion of probation user fees are used for other services aside from salaries; transferring fees to the state could negatively affect some counties. Mr. Powell asked if fees should be increased. Judge Embrey responded that raising them (perhaps by \$5) would help, but would also make it harder for poor people to pay. Judge Ryan suggested that courts be mindful of the number of fees already charged to offenders. Greater fee burdens could increase nonpayments and more probationers jailed for that technical violation.

Judge Marc Kellams, Monroe County Circuit Court, mentioned his 20 years of judicial experience and that probation officers in his department have increased from three to 30 (and now 52 employees, in total) in that period. He suggested that the Committee keep its options open regarding probation issues and rely on the experience of other states for recommendations on funding, organization, training, etc. He said that Monroe County has the only truly unified court system in the state, i.e. one court with seven divisions and seven judges who operate as a court board of directors. He stated that combining probation departments and community corrections has proven very effective, and he found it unbelievable that other counties operate separate systems. Court ordered drug and alcohol programs are within the probation department, and every probation officer is trained in alcohol and drug programming. This required training is in response to experience that the majority of probationers' drug or alcohol problems are highly related to their offenses and subsequent probation.

Judge Kellams stated that Monroe County probation officers have college degrees and must pass certification tests. However, he contends with turnover among college graduates who, after receiving training, leave for higher paid positions. He added that the Indiana Judicial Center's minimum salary schedule is really treated as a maximum schedule among counties. Increased user fees might help increase salaries and decrease turnover; however if user fees were diverted, probation departments might suffer. Of Monroe County's \$2 million probation budget, only 32% comes from general funds.

Judge Kellams emphasized that alternative sanctions like probation or work release keep people out of jail and give them the chance to succeed (through training, GED attainment, employment and treatment) and to provide restitution to the community. He mentioned a DOC study that indicated that requiring treatment and responsibility from offenders provides more effective rehabilitation than simple incarceration. Mr. Powell asked if probation function can be unified without unifying courts. Judge Kellams stated that it should not be necessarily to unify courts to unify probation systems.

Indiana Public Defenders Council

Larry Landis stressed that there are three issues involving probation: quality, cost and control. He stated that quality varied widely among counties and depended on the quality of the people administering the programs. Salary standards and especially training in mental health and substance abuse are crucial quality factors. Up to 80% of felony cases handled by public defenders deal with mental or substance abuse issues. Mr. Landis asserted that the state should consider more funding responsibility overall for the criminal justice system. He suggested that consideration of funding probation should take into account that the state already provides funding for judges, prosecutors and public defenders. He suggested that the probation could become too dependent on user fees, and in some courts, treatment services seem available only to those who can afford the fees.

Mr. Landis stated that “probation success” is not adequately defined. Possibilities could include successful completion of a probation period, reducing future criminal behavior, or other criteria. He suggested defining state standards for success, based on data on recidivism and other measures to hold systems accountable. However, means of gathering data are currently lacking.

Mr. Landis encouraged the Committee to explore merging probation, community corrections and parole. Regarding split sentencing, he thought that offenders are best placed under probation when the probation officer knows the offender’s history (as opposed to supervision by a parole officer who doesn’t know it). Mr. Landis concluded with the following comments. (1) No rational policy defined why community corrections is funded by DOC. (2) Probation officers should not have arrest powers or carry guns. (3) Technical violations of probationers should not be encouraged; probation success is aided by graduated sanctions. (4) Drug and alcohol behavioral problems should be addressed. (5) Probation requires high caliber people.

Judge Matsey reflected that Mr. Landis was asking a lot of probation officers in ability, background and training. Mr. Landis replied that such preparation was necessary since probation officers are judges’ primary information sources. Rep. Sturtz asked Mr. Landis his opinion on deferred prosecution. Mr. Landis said that prosecutors should not be paid for not prosecuting, and prosecution deferral is often dependent on an offender’s ability to pay, with these fees deposited into prosecution funds. Judge Ryan asked if deferred prosecution was a necessary constitutional compromise. Mr. Landis responded that courts should decide deferrals.

Robert Chamness asked if consideration should be given to Todd McCormack’s suggestion that up to 20% of probationers should not be even considered for placement on probation.² Mr. Landis agreed that a full range of sanctions should be explored. Mr. Chamness asked about state subsidy of public defenders based on Public Defender Council standards. Mr. Landis replied that 13 counties are involved in this voluntary program and are reimbursed 40% for indigent felony defense expenditures. He asked if public defenders would have a problem with allowing probation departments to assume control for more administrative determinations of technical violations. Mr. Landis responded that if these determinations defined probation versus imprisonment, he would be more comfortable using the judicial process. Judge Ryan asked LSA staff to research federal administrative actions on technical violations.

Probation Officers Professional Association of Indiana (POPAI)

Ted Ward, POPAI president, described his background as chief probation officer for Grant County and the 1985 formation of POPAI due to concerns on probation officer caseloads, salaries, etc. He stated that POPAI’s purpose is to support quality probation services and officer professionalism. POPAI provides training for probation officers, and it assisted IJC in defining probation officer standards.

Mr. Ward stated that probation services struggle to be recognized as a profession. This is due, in part, to

²Todd McCormack, Chair, Probation Officers Advisory Board, who testified at the August 27 meeting, suggested that up to 20% of persons on probation are inappropriately placed due to their minor crimes or past probation failures.

low salaries and high turnover among officers. He said that probation can be broken into three types of services: (1) court responsibilities (pre-sentencing reports, victim notification, fee collection); (2) responsibility to the public (probation officers are “on duty” at all times); and (3) responsibly to offenders, to treat them with dignity and respect.

Mr. Ward stated that there are numerous perspectives to use in defining probation success: punitive, least restrictive, supportive, treatment, etc. For example, aid in maintaining employment or probation officer volunteerism with offenders could be success attributes. Mr. Ward stressed the need to measure changes in conditions, as well as successes.

Indiana Prosecuting Attorney’s Council

Becky McClure, Council assistant executive director, addressed state funding for probation services. She said that with the recent increase in the number of probation officers, prosecutors have witnessed an increase in petitions to revoke probations due to violations. She stated that the Prosecuting Attorney’s Council supports an increase of state funding of criminal justice services, in general. However, with past increased hiring of police (e.g., through the federal COPS program) and potentially greater numbers of probation officers, she said that prosecutors’ functioning could require more staff and funding.

Mr. Hooker asked why probation revocations increased with the addition of more officers. Ms. McClure suggested that probation officers may have had more time to pay attention to technical violations and revocations. Judge Ryan commented that when he began his judiciary service in 1983, his court employed an attorney to process revocations. This task is now delegated to prosecutors, statewide. He stated that it seemed inconsistent that the judiciary controls the implementation of probation, but not probation revocations. The judiciary should control conditions throughout probation. Judge Ryan stated that one-third of his time is spent on violation revocations proceedings. He added his court does not process technical revocations, but makes extensive use of graduated sanctions. Mr. Powell remarked that prosecutors exercise little control in this area and process many violations due to user fee nonpayment. Judge Matsey remarked that the more fees that are required, the more courts may become dependent on them. There is a need to prioritize which fees should be aggressively collected.

Indiana Department of Correction Community Corrections

Robert Ohlemiller, DOC deputy director, described his responsibility for parole and community corrections at DOC. Judge Ryan asked if parole, probation and community corrections could be merged. Mr. Ohlemiller replied that the DOC is in the process of reviewing community corrections in other states that operate similar to Indiana. Judge Ryan asked if parole caseloads are diminishing. Mr. Ohlemiller countered that caseloads are relatively high, especially due to the number of parolees received from other states. DOC is currently studying a risk management system to address this. Judge Ryan asked if DOC is working on creative means to reduce recidivism and fund novel methodologies at local level. Mr. Ohlemiller said that local needs require balancing with research results. Judge Ryan asked if DOC could implement the types of grant-in-aid packages mentioned by Mr. Wills to promote novel community corrections/probation services. Mr. Ohlemiller replied that current programs are successful and the purpose of community corrections is to fund sanction alternatives to regular probation sanctions. Community corrections funds programs that “fill a gap” between regular imprisonment and probation. Judge Ryan asked if some DOC funding arrangement might be developed to stabilize growth for probation and community corrections populations. Mr. Ohlemiller responded that legislative changes could allow probationers into community corrections programs, but that community corrections has always been conducted as a voluntary program.

Mr. Powell asked if DOC would be willing to take over control of probation officers. Mr. Ohlemiller replied that this topic has not been discussed, and the community corrections grant programs work well to keep people out of prison. Judge Ryan stressed his concern with split sentencing, i.e. an offender is given a six-year term and the judge is persuaded to suspend two years, sending the person to probation for the last two years. He said it seemed irrational to give offenders a lot of experience with high-risk imprisoned

offenders, then release them to probation officers who may be unprepared to deal with them. Parole would be more suited to split sentencing. Mr. Ohlemiller replied that perspectives differ across counties.

Rep. Sturtz commented that there do not seem to be many inmates in work release programs. Mr. Ohlemiller replied that DOC has work release centers in Ft. Wayne and Indianapolis, but that most work release is carried on in community corrections, not DOC. As many as 1,000 offenders participate statewide. He said he would provide the Committee with work release figures.

Judge Ryan asked if analyses could be conducted on whether community corrections or probation should receive sex offenders. Mr. Ohlemiller replied that some communities might have programs that would work. Judge Ryan asked why probation supervision was better than community corrections electronic supervision. Mr. Ohlemiller responded that sex offenders need specialized treatment and only a few communities could adequately provide them. Judge Ryan asked if there is any reason to exclude sex offenders from community corrections. Mr. Ohlemiller replied that the DOC position is that offenders cannot be directly committed to community corrections, but can be placed there only as part of a standard probation sentence. Judge Ryan commented that he has 252 persons who have committed sex crimes or crimes against persons, and he asked that the Committee consider if community corrections could be an appropriate placement for these types of offenders.

There being no further business, the meeting ended at 3:40 p.m.